

The Honorable Fred Van Sickle

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

In re METROPOLITAN SECURITIES  
LITIGATION

No. CV-04-0025-FVS

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

ORDER  
PRELIMINARILY APPROVING  
SETTLEMENT BETWEEN THE  
CLASS AND DEFENDANT ROTH  
CAPITAL PARTNERS, LLC

Having considered the Motion and Memorandum of Plaintiffs, pursuant to Federal Rule of Civil Procedure 23, for an Order preliminarily approving the proposed settlement (the "Settlement") between the Class and defendant Roth Capital Partners, LLC ("Roth") in accordance with the terms and provisions of the Settlement Agreement dated January 29, 2010,

ORDER  
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**IT IS HEREBY ORDERED:**

1           **IT IS HEREBY ORDERED:**  
2           1.       This Order incorporates by reference the definitions in the Settlement  
3 Agreement and the Judgment. Additionally, the following terms are defined  
4 herein: (i) “Non Settling Defendant” and “Non Settling Defendants” refer to those  
5 defendants which or who were named in the Action as of January 1, 2010 other  
6 than Roth (specifically, PricewaterhouseCoopers LLP, Ernst & Young LLP, C.  
7 Paul Sandifur, Jr., Thomas Turner, Robert Ness, William Snider and Irv Marcus);  
8 and (ii) “Previously Settled Defendant” and “Previously Settled Defendants” refer  
9 to those defendants dismissed from the Action pursuant to the Court’s Judgment  
10 and Order Finally Approving Partial Settlements filed October 6, 2006  
11 (specifically, Robert K. Potter, Clayton E. Rudd, James V. Hawkins, Gregory S.  
12 Strate, Philip W. Sandifur, Samuel Smith, Bruce J. Blohowiak, B. Elaine Hoskin,  
13 Gary D. Brajcich, the Estate of Harold W. Erfurth, Reuel C. Swanson, William A.  
14 Smith, John T. Trimble and Erik E. Skaggs).

15           2.       The Court has personal jurisdiction over all parties to the Action and  
16 the Roth Action, including all Class Members, Roth and the Non Settling  
17 Defendants, and subject matter jurisdiction over the Action and the Roth Action.  
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19           3.       Without further order of the Court, the Settling Parties may agree in  
20 writing to reasonable extensions of time to carry out any of the provisions of the  
21 Settlement Agreement.  
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23           4.       In the interest of conserving expenses to the Class, pursuant to the  
24 terms of the Settlement Agreement, the Court shall defer approval of the form and  
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1 manner of providing notice of the Settlement to the Class and scheduling a hearing  
2 for final approval of the Settlement and Settlement Agreement (the “Final  
3 Approval Hearing”).

4         5.       The Court hereby preliminarily approves the Settlement, as embodied  
5 in the Settlement Agreement, as being fair, reasonable and adequate as to the Class  
6 Members, subject to further consideration at the Final Approval Hearing.

7         6.       This Order shall become null and void, with the exception of the  
8 Bifurcation Order, and be without prejudice to the rights of the Settling Parties, all  
9 of whom shall be deemed to have reverted to their respective statuses in the Action  
10 and the Roth Action as of January 29, 2010, if: (i) the Effective Date does not  
11 occur; or (ii) the proposed Settlement is terminated or does not become effective  
12 for any other reason. In such event, the Settlement Agreement shall become null  
13 and void and have no further force and effect, and the Settlement shall be without  
14 prejudice and none of its terms shall be effective or enforceable.

15         7.       The Action is stayed as to Roth in all respects until further order of the  
16 Court, except as may be necessary to implement and effectuate the Settlement and  
17 Settlement Agreement.

18         8.       Pending determination by the Court as to whether the Settlement, as  
19 set forth in the Settlement Agreement, is fair, reasonable and adequate and should  
20 be finally approved, and whether the Judgment dismissing the Action and the Roth  
21 Action with prejudice as to Roth and an order barring claims against the Roth  
22 Released Parties should be entered, no Lead Plaintiff nor any Class Member, either  
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1 directly, representatively or in any other capacity, shall assert, commence or  
2 prosecute against any of the Roth Released Parties any of the Roth Released  
3 Claims in this Action or the Roth Action or any other proceeding or forum. This  
4 injunction is necessary to protect and effectuate the Settlement, this Order, and the  
5 Court's flexibility and authority to effectuate the Settlement and to enter judgment  
6 when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its  
7 judgments pursuant to 28 U.S.C. Section 1651(a).

9       9. Pursuant to 15 U.S.C. § 78u-4(f)(7)(A), the Settlement Agreement and  
10 applicable law, any and all claims arising out of any claims under the federal  
11 securities laws released by the Class, including, but not limited to, any claims  
12 based upon, arising out of or relating to the claims or allegations that were asserted  
13 or could have been asserted by the Class in the Action, the Class Action  
14 Complaint, Consolidated and Amended Class Action Complaint, Consolidated and  
15 Second Amended Class Action Complaint, Consolidated and Third Amended  
16 Class Action Complaint, Consolidated and Fourth Amended Class Action  
17 Complaint, or the Roth Action, (a) by any person against the Roth Released  
18 Parties, and (b) by the Roth Released Parties as to any Non Settling Defendant are  
19 hereby permanently barred, enjoined and restrained. This bar shall apply whether  
20 or not the Roth Released Parties are "covered persons" as defined in 15 U.S.C.  
21 § 78u-4(f)(10). Accordingly, without limiting the above, any person (including  
22 any Non Settling Defendant and all persons purporting to act on his, its or their  
23 behalf and all persons purporting to claim by or through him, it or them, whether  
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1 under a subrogation theory or otherwise) is hereby permanently barred, enjoined  
2 and restrained from asserting, commencing or prosecuting against the Roth  
3 Released Parties any such claims, and the Roth Released Parties are hereby  
4 permanently barred, enjoined and restrained from asserting, commencing or  
5 prosecuting against any Non Settling Defendant any such claims.  
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7 10. If any final verdict or judgment, or portion of any final verdict or  
8 judgment, under the federal securities laws is obtained by or on behalf of the Class  
9 or a Class Member against any Non Settling Defendant over matters for which  
10 Roth would have been jointly and severally liable, as determined by the jury  
11 through special interrogatories allocating any liability for the expertise and non-  
12 expertise portions of the registration statements to Roth, any Previously Settled  
13 Defendant and/or any Non Settling Defendant, then such final verdict or judgment,  
14 or portion of any final verdict or judgment, over matters for which Roth would  
15 have been jointly and severally liable shall be reduced by the greater of: (a) an  
16 amount that corresponds to the percentage of fault or responsibility attributed to  
17 Roth for the alleged loss to the Class or the Class Member as determined by the  
18 jury with regard to the portion of the judgment for which Roth would have been  
19 jointly and severally liable; or (b) the amounts paid by or on behalf of Roth to the  
20 Class or the Class Member in connection with the Settlement Agreement.  
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23 11. The Court finds that the Settlement represents a reasonable and good  
24 faith settlement of all claims arising under state law or federal non-securities law  
25 released by the Class under the Settlement Agreement and is sufficient to discharge  
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1 the Roth Released Parties from all such claims. The Court further finds that the  
2 Roth Released Parties are entitled to protection to the fullest extent permitted by  
3 applicable state law and federal non-securities law from liability to third parties for  
4 contribution or indemnification or any other claim where the claimant's injury is  
5 the claimant's liability to the Class. These protections include, without limitation,  
6 those provided by Revised Code of Washington 4.22.060, California Code of Civil  
7 Procedure Sections 877 and 877.6 and any comparable statute or common law of  
8 any other state (the "Additional Contribution Protections"). The Court further  
9 finds that, to the extent such Additional Contribution Protections apply, any Non  
10 Settling Defendant shall have any final verdict or judgment obtained by or on  
11 behalf of the Class or a Class Member against such Non Settling Defendant  
12 reduced according to the corresponding judgment reduction provisions applicable  
13 under such state law or federal non-securities law, including, but not limited to,  
14 those provided by Revised Code of Washington 4.22.060, California Code of Civil  
15 Procedure Sections 877 and 877.6 and any comparable statute or common law of  
16 any other state.

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20 12. Pursuant to the Settlement Agreement and applicable law, any person  
21 (including any Non Settling Defendant, and all persons and entities representing  
22 them or otherwise acting on their behalf), is permanently barred, enjoined and  
23 restrained from asserting, commencing or prosecuting any claim under state law or  
24 federal non-securities law against the Roth Released Parties, however styled,  
25 whether legal or equitable, whether known or unknown, whether for  
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1 indemnification or contribution or otherwise denominated (including without  
2 limitation claims for breach of contract or misrepresentation), where the claim is  
3 based on, arises out of or relates to claims or allegations that were asserted or could  
4 have been asserted in the Action or the Roth Action (the “Barred Claims”).

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6 13. Because the Non Settling Defendants, and all persons and entities  
7 representing them or otherwise acting on their behalf, are barred from asserting any  
8 Barred Claims against the Roth Released Parties, any final verdict or judgment  
9 obtained by the Class or a Class Member against a Non Settling Defendant shall be  
10 reduced in accordance with the judgment reduction provisions under state law or  
11 federal non-securities law applicable to such Barred Claims.

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13 14. In the event the Action proceeds to trial as to any Non Settling  
14 Defendant: (i) the Class may not use any finding, ruling, order, trial testimony,  
15 verdict or judgment or any attribution of fault or responsibility to Roth, for any  
16 purpose whatsoever against Roth in the Action, the Roth Action or in any other  
17 proceeding or forum; (ii) any finding, ruling, order, trial testimony, verdict or  
18 judgment or any attribution of fault or responsibility to Roth, shall not be  
19 admissible for any purpose whatsoever as against Roth in the Action, the Roth  
20 Action or in any other proceeding or forum; (iii) any finding, ruling, order, trial  
21 testimony, verdict or judgment or any attribution of fault or responsibility to Roth,  
22 shall not constitute collateral estoppel or res judicata as to Roth in the Action, the  
23 Roth Action or in any other proceeding or forum; (iv) Roth shall not use any  
24 finding, ruling, order, trial testimony, verdict or judgment for any purpose  
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1 whatsoever against the Class in the Action or the Roth Action or against the Class  
2 in any other proceeding or forum; (v) any finding, ruling, order, trial testimony,  
3 attribution of fault or responsibility to any other defendant, verdict or judgment  
4 shall not be admissible for any purpose against the Class in the Action or the Roth  
5 Action or against the Class in any other proceeding or forum in any litigation  
6 between Roth and the Class; and (vi) any finding, ruling, order, trial testimony,  
7 attribution of fault or responsibility to any other defendant, verdict or judgment  
8 shall not constitute collateral estoppel or res judicata as to the Class in the Action  
9 or the Roth Action or against the Class in any other proceeding or forum in any  
10 litigation between Roth and the Class. If the Settlement is terminated or fails to  
11 become effective for any reason, the Class shall not be estopped from asserting the  
12 liability of Roth in the Action, the Roth Action or any other proceeding or forum as  
13 if no settlement had been negotiated or entered into, and Roth shall not be estopped  
14 from challenging liability in the Action, the Roth Action or any other proceeding  
15 or forum as if no settlement had been negotiated or entered into.

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18 15. This Order shall not be construed or used as an admission, concession  
19 or declaration by or against Roth of any fault, wrongdoing, breach, or liability.  
20 Nor shall the Order be construed or used as an admission, concession or  
21 declaration by or against the Class Representatives or the Class, that their claims  
22 lack merit, that their damages are in any way limited, or that the relief requested in  
23 the Action or the Roth Action is inappropriate, or as a waiver by any party of any  
24 defenses of claims he, she, or it may have.  
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16. The Class shall move the Court for an order approving and directing notice of the Settlement to the Class, and setting a final approval hearing, no later than the earlier of either (i) final resolution of the Class's claims against the Non Settling Defendants, or (ii) June 15, 2010, or such continued date as the Class and Roth may agree to in writing.

**IT IS SO ORDERED** this 12<sup>th</sup> day of February, 2010.

s/ Fred Van Sickle

UNITED STATES DISTRICT JUDGE

Presented by:

GORDON THOMAS HONEYWELL LLP

By: \_\_\_\_\_  
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